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Letter dated 6 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 11 June 2003 (S/2003/646).

The Counter-Terrorism Committee has received the attached third report from Ukraine submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 14 October 2003 from the Permanent Representative of Ukraine to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to your letter dated 6 June 2003, I have the honour to submit the information on the comments questions that were agreed by the Counter-Terrorism Committee after the consideration of the supplementary report of Ukraine, submitted to the Committee on 13 September 2002 pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).*

(*Signed*) Valeriy **Kuchinsky**
Ambassador
Permanent Representative

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

[Original: Russian]

Supplementary report on the measures taken in Ukraine to implement Security Council resolution 1373 (2001)

Replies to questions contained in the letter from the Counter-Terrorism Committee, S/AC.40/2003/MS/OC.227

Paragraph 1.2

The Act "on combating terrorism" was adopted by the Ukrainian Parliament on 20 March 2003 (No. 638-IV), was signed by the President of Ukraine and entered into force on the day of its official publication, 22 April 2003.

To ensure its implementation, the Act "on revisions to certain legislative instruments of Ukraine in connection with the adoption of the Act on combating terrorism" (No. 965-IV of 19 June 2003) was drafted and adopted, in order to bring existing legislation — the Code of Criminal Procedure of Ukraine and the Acts "on operational investigations", "on the Security Service of Ukraine" and "on the State Border Service of Ukraine" — into line with the Act "on combating terrorism".

The Act "on measures to prevent and counteract the legalization (laundering) of proceeds of crime" (No. 249-IV) was adopted by Parliament on 28 November 2002, was signed by the President of Ukraine and entered into force on 11 June 2003.

In order to align its provisions with the requirements of the Financial Action Task Force on Money Laundering (FATF), a number of amendments were made (Acts No. 345-IV, of 24 December 2002 and No. 485-IV, of 6 February 2003), which introduced amendments to the following Acts:

- "On banks and banking activities";
- "On financial services and State regulation of financial service markets";
- "On measures to prevent and counteract the legalization (laundering) of proceeds of crime"; and to the Criminal Code of Ukraine.

These amendments lay down a clear-cut procedure for the identification of clients by banks and financial institutions, which are also given the right to obtain the relevant information about their clients from State agencies. There is also a clear exposition of the rules concerning an exemption from liability for colleagues of persons placed under initial financial monitoring in respect of the lawful disclosure of information constituting a banking or commercial secret to the bodies exercising regulation and control over the activities of financial institutions and to the specially authorized executive agency for financial monitoring.

The Act "on amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine" (No. 430-IV, of 16 January 2003, which entered into force on 12 June 2003) introduces new wording for article 209, which is entitled "Legalization (laundering) of proceeds of crime":

"1. The execution of a financial transaction or the conclusion of an agreement involving funds or other property obtained as the result of a socially dangerous unlawful act that preceded the legalization (laundering) of the proceeds thereof, or other actions aimed at concealing or disguising the illegal origin of such funds or other property, or the possession of or title to such funds or property, or their origin, location or transfer, or the acquisition, possession or use of funds or other property obtained as the result of a socially dangerous unlawful act that preceded the legalization (laundering) of the proceeds of crime, shall be punishable by imprisonment for a term of three to six years, with the deprivation of the right to occupy certain positions or engage in certain activities for a period of up to two years and the confiscation of the funds or other property obtained through crime and the confiscation of property.

2. The actions referred to in paragraph 1 of this article shall, if committed repeatedly or by prior agreement by a group of persons, or in respect of large sums, be punishable by imprisonment for a term of 7 to 12 years, with the deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years and the confiscation of the funds or other property obtained through crime and the confiscation of property.

3. Actions referred to in paragraphs 1 or 2 of this article shall, if committed by an organized group of persons or in respect of particularly large sums, be punishable by imprisonment for a term of 8 to 15 years, with the deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years, and the confiscation of the funds or other property obtained through crime and the confiscation of property.

Note:

1. For the purposes of this article, a socially dangerous unlawful act preceding the legalization (laundering) of the proceeds of crime is an act punishable under the Criminal Code of Ukraine by imprisonment for three years or more (except for acts committed under articles 207 and 212 of the Criminal Code of Ukraine), or any act which is a criminal offence under the criminal law of another State and is also punishable under the Criminal Code of Ukraine, and which results in the acquisition of the proceeds of crime.

2. The legalization (laundering) of the proceeds of crime shall be considered to have been committed in respect of large sums where it involves funds or other property amounting to more than six thousand times the minimum income in Ukraine before tax.

3. The legalization (laundering) of the proceeds of crime shall be considered to have been committed in respect of especially large sums where it involves funds or other property amounting to more than 18 thousand times the minimum income in Ukraine before tax."

Paragraph 1.3

Ukraine's report in response to the questionnaire circulated by the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV) concerning Ukraine's achievements in combating the laundering of the proceeds of crime in 2001-2002 is enclosed herewith.

Paragraphs 1.4 and 1.5

Article 64 of the Act "on banks and banking activities" and article 18 of the Act "on financial services and State regulation of financial service markets" provide that financial institutions may not, in executing or providing financial services, enter into contractual relations with anonymous persons or hold or operate anonymous (numbered) accounts.

Under articles 4, 5 and 6 of the Act "on measures to protect and counteract the legalization (laundering) of proceeds of crime", the financial monitoring system comprises two levels: the initial and the State level.

The institutions responsible for initial financial monitoring are:

- Banks, insurance companies and other financial institutions;
- Payroll institutions, members of payment systems and acquisition and clearing institutions;
- Commodity, stock and other exchanges;
- Professional operators in the securities market;
- Joint investment institutions;
- Gambling institutions, pawnbrokers and legal persons conducting various kinds of lotteries;
- Enterprises and organizations that manage investment funds or non-State pension funds;
- Communications companies and associations and other non-credit organizations that execute money transfers;
- Other legal persons that process financial transactions in accordance with the law.

The institutions responsible for State financial monitoring are:

- The central executive authorities and the National Bank of Ukraine, which, in accordance with the law, regulate and supervise the activities of legal persons processing financial transactions;
- The specially authorized executive agency for financial monitoring, a State administrative body operating within the Ministry of Finance of Ukraine (the State Department for Financial Monitoring, or Authorized Agency).

Under the Act, the institutions responsible for initial financial monitoring are required, in implementation of the Act:

- To establish the identity of persons who engage in financial transactions that are subject to financial monitoring pursuant to this Act or open an account (including a deposit account) on the basis of documents submitted in the prescribed manner, or where there is reason to consider that the information concerning the identification of such persons requires clarification;
- To detect and register financial transactions that are subject to financial monitoring under this Act;

- To submit to the Authorized Agency information on financial transactions that are subject to compulsory financial monitoring within three working days from the time of registration;
- To assist the staff of the Authorized Agency in their investigation of financial transactions that are subject to compulsory financial monitoring;
- To provide, in accordance with the law, additional information at the request of the Authorized Agency on financial transactions that have become the object of financial monitoring, including banking and commercial secrets, within three working days from the time of receipt of the request;
- To assist the institution responsible for State financial monitoring in the investigation of financial transactions that are subject to financial monitoring;
- To take steps to prevent the disclosure (including disclosure to persons whose financial transactions are being checked) of information submitted to the Authorized Agency or other information concerning financial monitoring (including information concerning the submission of such information);
- To retain documents relating to the identification of persons conducting financial transactions that, under this Act, are subject to financial monitoring, and all documentation concerning financial transactions for a period of five years after the execution of such transactions.

The institution responsible for initial financial monitoring, taking into account the requirements of existing legislation and the normative and legal acts of the Authorized Agency, establishes the regulations for conducting internal financial monitoring and assigns a staff member to be responsible for such monitoring.

The staff member must be independent in his activities and accountable only to the head of the institution responsible for initial financial monitoring, whom he is obliged to inform at least once a month of the uncovering of financial transactions that are subject to financial monitoring and of measures that have been adopted, which may include:

- Drafting and regular updating of the regulations and programmes for internal financial monitoring and their taking into account the requirements of existing legislation and the normative acts of the Authorized Agency;
- Training of personnel in the detection of financial transactions that are subject to financial monitoring under the provisions of this Act through instruction and practical measures;
- Conducting of internal financial monitoring.

The institution responsible for initial financial monitoring has to identify, on the basis of original documents or duly certified copies, persons engaged in financial transactions that are subject to financial monitoring under this Act.

The following are required for the identification of residents:

- In the case of natural persons, surname, first name and patronymic, date of birth, series and number of passport (or other identification document), date of issue and issuing body, residence, identification number under the State register of individuals — tax payers and makers of other compulsory payments;

– In the case of legal persons, company name, legal address, State registration documents (including statutory documents and information concerning officials and their functions), identification code under the Unified Register of enterprises and organizations of Ukraine, bank account number and details of the bank holding the account.

The following are required for the identification of non-residents:

– In the case of natural persons, surname, first name, patronymic (if any), date of birth, series and number of passport (or other identification document), date of issue and issuing body, nationality, residence or place of temporary residence;

– In the case of legal persons, full name, location, bank account number and details of the bank holding the account.

The institution responsible for initial financial monitoring must also be provided a certified copy of an extract from a commercial, banking or legal register, or a notarized registration certificate issued by an authorized agency of a foreign State confirming the registration of the legal person concerned.

Identification is not compulsory in cases involving:

– Financial transactions by persons previously identified;

– Agreements between banks registered in Ukraine.

Where a person acts as the representative of another person, or the institution responsible for the initial financial monitoring becomes suspicious that the person is acting on his own behalf or that the beneficiary is a third person, the institution responsible for initial financial monitoring is obliged, under this article and the provisions of other legislation regulating this procedure, to establish also the identity of the person on whose behalf the financial transaction is conducted or who is the beneficiary.

Under article 17 of the Act, those guilty of breaching the provisions of the Act bear criminal, administrative and civil liability. Such persons may also, in accordance with the law, be deprived of the right to engage in certain activities.

Legal persons conducting financial transactions to legalize (launder) the proceeds of crime or funding terrorism may be liquidated by order of a court.

An institution responsible for initial financial monitoring that fails to fulfil the requirements of this Act, or does so in an improper manner, may, in accordance with the law, be punished with a fine of up to one thousand times the minimum taxable income of citizens. In the absence of agreement concerning payment of the fine, a decision to impose or reject such a fine is taken by the courts at the request of the authority that regulates the activities of the institution concerned and issues licences or other special permits.

Repeated failure by institutions responsible for initial financial monitoring to fulfil the requirements of this Act entails, through a court decision, restrictions on or the temporary suspension of activity and confiscation of the licence or other special permit to conduct specific activities in the manner prescribed by law.

In addition, the Act "on amendments to the Criminal Code and Code of Criminal Procedure of Ukraine" (No. 430-IV, of 16 January 2003) introduces a new legal regulation — article 2091, entitled "Intentional violation of requirements of

legislation on preventing and counteracting the legalization (laundering) of proceeds of crime" — which states:

> "1. Repeated intentional failure to submit to the specially authorized executive agency for financial monitoring information concerning financial transactions or repeated intentional submission of deliberately false information concerning financial transactions subject to internal or compulsory financial monitoring shall be punishable by a fine of one thousand to two thousand times the minimum income before tax or by restriction of freedom for up to two years, or by imprisonment for the same period and the deprivation of the right to occupy certain posts or engage in certain activities for up to three years.
>
> 2. Illegal disclosure, in any form, of information submitted to the specially authorized executive agency for financial monitoring by a person in possession of such information in connection with his professional or official activities shall be punishable by a fine of two thousand to three thousand times the minimum income before tax or by restriction of his freedom for up to three years, or by imprisonment for the same period and the deprivation of the right to occupy certain posts or engage in certain activities for up to three years."

In view of the fact that this legal regulation entered into force on 12 June 2003, it is not yet possible to provide information on its implementation in practice.

It should be noted that the State Department for Financial Monitoring has drafted and submitted for legal assessment to the Ministry of Justice of Ukraine a draft Act "on amendments to certain laws of Ukraine on questions relating to the implementation of the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF)", one provision of which would introduce amendments to article 4, part 2, tenth paragraph, of the Act "on measures to prevent and counteract the legalization (laundering) of proceeds of crime", namely by replacing the paragraph with the following paragraphs:

> "Other legal persons that, in accordance with the law, provide financial services; traders in immovable property (real estate companies); dealers in precious metals and precious stones; notaries, lawyers and independent companies offering legal services;
>
> "Auditors, auditing firms and independent companies offering bookkeeping services; and fiduciary societies;
>
> "Independent companies providing services for the establishment and registration of enterprises, and the management of enterprises and property."

Paragraph 1.6

Paragraph 4 of article 258, entitled "Terrorist act", of the Criminal Code establishes criminal liability in respect of the "formation of a terrorist group or terrorist organization, the leadership of such a group or organization, or participation therein, as well as material, organizational or any other form of assistance to the formation or activity of a terrorist group or terrorist organization".

In order to stiffen the legislative provisions establishing liability for the wilful provision or collection of funds for the direct or indirect financing of terrorist activity, the President of Ukraine issued the Decree "on measures for developing the

system to counteract the legalization (laundering) of proceeds of crime and the financing of terrorism" (No. 740/2003 of 22 July 2003).

Paragraph 4, subparagraph 1 (b), of the Decree provides for the tabling in the Supreme Council of a draft law on the introduction of legislative amendments related to the ratification of the International Convention for the Suppression of the Financing of Terrorism (which was signed by Ukraine on 8 June 2000 and ratified by Act No. 149-IV of 12 September 2002).

It is intended that the recommendations contained in the above-mentioned United Nations Convention and in paragraph 1 (b) of Security Council resolution 1373 (2001) should be implemented through the drafting of the appropriate legislative acts.

Paragraph 1.7

In addition to article 126 of the Code of Criminal Procedure, which regulates the confiscation of property, including accounts and assets held in banks or financial institutions, national legislation entitles law enforcement agencies (the Ministry of Internal Affairs and the Security Service) to seize (block) funds and other assets of natural and legal persons for a period of 10 days:

- Article 12, paragraph 4 (b), of the Act "on the organizational and legal bases for combating organized crime" gives such a right to special units of internal affairs agencies and the Security Service which fight organized crime;
- Article 25 of the Act "on the Security Service of Ukraine", has been supplemented by a paragraph 5, which, in particular, gives such a right to the organs of the Security Service when measures are taken to combat terrorism or the financing of terrorist activities (Act No. 965-IV of 19 June 2003).

Legislative provisions regulating the blocking of funds, financial assets and other economic resources of persons who carry out, or attempt to carry out, terrorist acts are also to be found in the Presidential Decree "on measures for developing the system to counteract the legalization (laundering) of proceeds of crime and the financing of terrorism" (No. 740/2003 of 22 July 2003).

Paragraph 1.8

In order to comply with the requirements of Security Council resolutions 1333 (2000), 1390 (2002) and 1455 (2003), Ukraine is implementing measures to block the funds and other financial resources of Osama bin Laden and his supporters. In particular, Cabinet of Ministers resolutions No. 351 of 11 April 2001 and No. 749 of 1 June 2002 prohibit, as laid down by the Security Council Committee established pursuant to resolution 1267 (1999):

1. The direct or indirect supply, sale or transfer to Taliban-controlled territory in Afghanistan of:

- Weapons, ammunition, arms technology and equipment;
- Technical advisory services or training services related to military activities;
- Acetic anhydride.

This prohibition applies to Ukrainian nationals and legal persons, but also bans other persons from engaging in such activities from Ukrainian territory.

2. The take-off from Ukrainian territory, its overflight, or the landing therein by aircraft which have taken off from, or are scheduled to land in, Taliban-controlled territory in Afghanistan is prohibited, unless such flights are approved in advance by the Security Council Committee.

3. Funds and other financial assets of Osama bin Laden and of persons and organizations linked to him, including the funds and assets of the Al-Qaida organization and also those received from the use, or on account of, property under the influence or control of Osama bin Laden, or of persons or organizations linked to him are to be seized.

4. The entry into Ukrainian territory of Osama bin Laden and his supporters is prohibited, and also the entry into, or transit through, Ukraine of senior officials of the Taliban movement is restricted.

5. Activities in Ukrainian territory by units of the Taliban movement are banned.

Information regarding the ban on the activities of Osama bin Laden and of persons or organizations linked to him and regarding the action taken by State organs in connection with that ban has been updated in other useful documents produced by the Government and the National Bank (some of which are enclosed).

Paragraph 1.9

Insurance organizations are among the institutions responsible for initial financial monitoring under the financial monitoring system established by the Act "on measures to prevent and counteract the legalization (laundering) of the proceeds of crime" (described in the replies to paragraphs 1.4 and 1.5). The provisions of this Act precisely define the obligation of institutions responsible for initial financial monitoring to identify financial transactions and the persons or organizations conducting them and to provide timely information about them to the State financial monitoring bodies, i.e. the Ministry of Finance and the State Financial Monitoring Department and Chief Auditing Office, which are attached to the Ministry, the National Bank of Ukraine and the State Commission for the Regulation of Financial Services Markets.

Article 17 of the above-mentioned Act and articles 39 to 44 of the Act "on financial services and the State regulation of financial services markets" (which entered into force on 11 June 2003) govern liability for non-compliance with legislative provisions, including those on furnishing information on suspicious financial deals. In particular, the latter Act lays down measures for bringing pressure to bear on enterprises providing financial services, which include insurance companies. These measures include the imposition of penal sanctions, temporary suspension of activity or revocation of the licence to operate, dismissal of the management of enterprises, judicial liquidation of enterprises and determining the administrative or criminal liability of natural persons involved in violations of legislative provisions in this area.

Paragraph 1.10

The State Auditing Service of the Ministry of Finance carries out the next stage of checks on the use of funds and assets, their safekeeping and status and the trustworthiness of accounting and bookkeeping in ministries, departments, State committees, State funds, and budgetary institutions and in enterprises and organizations which receive funds from budgets at any level, or from State foreign currency funds.

Furthermore, pursuant to the Act "on the State Auditing Service in Ukraine" (which entered into force on 26 January 1993 and was amended on 15 May 2003) and to instructions which regulate auditing procedure (inspection and verification) and which are registered with the Ministry of Justice, organs of the State Auditing Service may, at the request of law-enforcement agencies investigating criminal cases, inspect and examine other organizations, including those engaged in the collection of funds for charitable, social or cultural objectives.

Under Presidential Decree No. 740 of 22 July 2003 "on measures for developing the system to counteract the legalization (laundering) of proceeds of crime and the financing of terrorism", law-enforcement agencies and the Chief Auditing Office are instructed:

- To carry out systematically joint measures to uncover and halt suspicious financial transactions conducted by natural and legal persons, to detect concealment of the illegal provenance of funds or other property and to identify their sources;
- To study and disseminate, using the resources of departmental scientific institutions, international experience in the field of preventing and counteracting the legalization (laundering) of proceeds of crime and to prepare recommendations on methods for improving work to prevent, detect and halt offences related to the legalization (laundering) of such income.

Paragraph 1.11

Article 1 of the Act "on combating terrorism" defines as one of the characteristics of terrorist activity the intentional financing of terrorist groups (organizations), or any other form of assistance to them. A terrorist organization is defined as a stable association of three or more persons which has been set up for the purpose of carrying out terrorist activities. An organization is deemed to be a terrorist organization if only one of the units forming part of its structure engages in terrorist activities with the knowledge of only one of the leaders (or management bodies) of the entire organization.

Pursuant to article 24 of this Act, entitled "Liability of organizations for conducting of terrorist activity", an organization which is responsible for perpetrating a terrorist act and is deemed by a court ruling to be a terrorist organization is subject to liquidation and the confiscation of its property. If a Ukrainian court finds that the activity of an organization (or of a section, branch or office thereof) which is registered outside Ukraine constitutes terrorist activity, its activity is prohibited in Ukrainian territory, its Ukrainian section (branch or office) is closed on the basis of a court decision and its property and the property of the above-mentioned organization located in Ukrainian territory is confiscated. The application to prosecute the organization for terrorist activities is accordingly lodged

with the court by the Procurator General of Ukraine, the public prosecutors of the Autonomous Republic of Crimea, the Ukrainian regions and the cities of Kiev and Sevastopol, in the manner prescribed by the law.

Furthermore, article 17 of the Act, "on measures to prevent and counteract the legalization (laundering) of proceeds of crime" (referred to in the replies to paragraphs 1.4 and 1.5) regulates the liability of legal persons for the financing of terrorist activity.

As for the criminal liability of legal persons for terrorist actions or actions related thereto, Ukrainian legislation has reached the stage at which this legal innovation, which has only recently appeared in international practice, is being studied. Hence no provision has been made as yet for such liability. At the same time, it must be emphasized that article 5 of the International Convention for the Suppression of the Financing of Terrorism provides for not only criminal liability in respect of such actions, but also "effective, proportionate and dissuasive criminal, civil or administrative sanctions" and for monetary sanctions.

Paragraph 1.12

The adoption by the Verkhovna Rada of the new Criminal Code containing the article entitled "Terrorist Act" of the special Act "on combating terrorism" and of the Programme of State Counter-terrorism Measures 2003-2005 is a decisive feature of an active standard-setting process aimed at adapting national laws and the system of anti-terrorist measures to the norms of international law in the field of counter-terrorism.

The notion "terrorist act" is defined in article 258 of the Criminal Code. Moreover, the Criminal Code contains a number of articles focusing on anti-terrorism, which, to some extent, relate to efforts to combat this crime (list enclosed).

The Act "on combating terrorism", which entered into force on 23 April 2003, defines the basic terms and their meaning, for example, terrorism, a terrorist act, technological terrorism, terrorist activity, international terrorism, a terrorist, a terrorist group, a terrorist organization, combating terrorism, an anti-terrorist operation, a hostage, etc.

Hence, terrorist activity is defined as activity encompassing:

- The planning, organization, preparation and commission of terrorist acts;
- Incitement to commit terrorist acts, to engage in violence against natural persons or organizations, or to destroy physical objects for terrorist purposes;
- The establishment of illegal military units, criminal gangs (criminal organizations) or organized criminal groups for the perpetration of terrorist acts, as well as participation in such acts;
- The recruiting, arming, training and use of terrorists;
- Spreading terrorist propaganda and the ideology of terrorism;
- The intentional financing of terrorist groups (organizations) or giving any other form of assistance to them.

A terrorist organization is defined by the Act in question as a stable association of three or more persons which is formed for the purpose of conducting terrorist activities and within which functions are assigned and specific rules of conduct are laid down, which are binding on these persons during the preparation and perpetration of terrorist acts. An organization is deemed to be a terrorist organization if only one of the units forming part of its structure engages in terrorist activity with the knowledge of only one of the leaders (or management bodies) of the entire organization.

According to article 2 on "The legal bases for combating terrorism", the Constitution, the Criminal Code, the Act in question, other Ukrainian laws, the European Convention on the Suppression of Terrorism of 1977, the International Convention for the Suppression of Terrorist Bombing of 1997, the International Convention for the Suppression of the Financing of Terrorism of 1999, other international agreements entered into by Ukraine, Presidential decrees and orders, resolutions and orders of the Cabinet of Ministers and other normative and legal acts adopted in implementation of Ukrainian laws form the legal basis for combating terrorism.

Section IV of the Act "on combating terrorism" provides for the liability of persons who are guilty of terrorist activity (article 23) and for the liability of organizations in respect of terrorist activity. In particular, an organization held liable for the commission of a terrorist act and deemed in a court ruling to be a terrorist organization shall be subject to disbandment and to the confiscation of its property.

In addition, article 25 specifically provides for liability for promoting terrorist activities. Hence the heads and officials of enterprises, institutions and organizations and citizens who have promoted terrorist activity bear liability in accordance with the law if, in particular:

- They have financed terrorists or terrorist groups (terrorist organizations);
- They have supplied or collected funds directly or indirectly with the intention of using them for the perpetration of terrorist acts or crimes with a terrorist purpose;
- They have carried out operations with funds and other financial assets;
- They are natural persons who have committed, or attempted to commit, terrorist acts or crimes with a terrorist purpose, or have taken part in or abetted their commission;
- They are legal persons whose property is directly or indirectly in the possession or under the control of terrorists or of persons who promote terrorism;
- They are legal or natural persons who act on behalf of or on instructions from terrorists or persons who promote terrorism, while employing funds received or acquired with the use of property which is directly or indirectly in the possession, or under the control of, persons who promote terrorism, or of legal or natural persons connected with them;
- They have supplied funds, financial assets or other economic resources, or corresponding services, directly or indirectly for use in the interests of natural persons who commit terrorist acts, or who abet or take part in their

commission, or in the interests of legal persons whose property is directly or indirectly in the possession or under the control of terrorists or persons who promote terrorism, or of legal or natural persons acting on behalf of or on instructions from the above-mentioned persons;

- They have rendered assistance to persons who have taken part in the commission of terrorist acts;
- They have recruited natural persons for the pursuit of terrorist activities, have helped to set up channels for supplying terrorists with weapons, or to move terrorists across the State border of Ukraine;
- They have harboured persons who have financed, planned, supported or committed terrorist acts or crimes with a terrorist purpose;
- They have used the territory of Ukraine for the purpose of preparing or committing terrorist acts or crimes with a terrorist purpose against other States or aliens.

Paragraph 1.13

Article 447 (Mercenarism) of the Criminal Code provides for criminal liability in respect of the recruitment, financing, equipping and training of mercenaries in order to use them in armed conflicts in the territory of other States, or in violent acts designed to overthrow the State order or violate territorial integrity, or in order to use them in military conflicts.

In addition, Ukraine has ratified the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (which has not yet been ratified by the requisite number of States).

Ukrainian legislation prohibits the setting up of militarized or armed units that are not provided for by law and gives them a precise definition (article 260 of the Criminal Code).

Paragraph 1.14

In order to prevent the entry into Ukrainian territory, ostensibly for study, medical treatment or official or personal reasons, of persons involved in terrorist activities, the Ministry of the Interior is participating in the establishment of a single standardized form for issuing invitations to foreigners to enter Ukraine and of a mechanism for prompt agreement with Interior Ministry agencies on the issue of such invitations.

In addition, the Ministry is compiling a computerized databank (including automated fingerprint reading) for documenting and keeping records of persons arrested for unlawfully crossing the State frontier or for being present unlawfully in Ukrainian territory. This will make it possible, following checking against the corresponding records of law-enforcement agencies of foreign States and international police organizations, to identify persons involved in planning, furthering or perpetrating terrorist acts. With a view to the further implementation of this provision of the Security Council resolution, the Ministry is planning to provide in the draft Act "on arrangements for providing asylum in Ukraine to aliens and

stateless persons" for the imposition of restrictions on the granting of asylum and issue of the corresponding documents to persons suspected of involvement in the activities of terrorist or extremist organizations. There is also a plan to elaborate on the detail of the provisions of article 10 (Circumstances under which refugee status shall not be granted) of the Act "on refugees".

Paragraphs 1.15 and 1.18

During the ratification process, Ukraine did not enter any reservations to any articles of the 1977 European Convention on the Suppression of Terrorism, which it signed on 8 June 2000 and ratified on 17 January 2002.

Article 25 of the Constitution of Ukraine guarantees its citizens the statutory right not to be extradited to another State. However, the Criminal Code provides for the extradition of persons charged with a crime and persons convicted of a crime. Article 8 of the Criminal Code extends the Act's scope to aliens or stateless persons not residing permanently in Ukraine who have committed a crime beyond its borders. Such persons bear criminal liability in accordance with domestic legislation in the cases in which Ukraine's international obligations apply. Furthermore, article 7 provides for the criminal liability of Ukrainian citizens and stateless persons residing permanently in Ukraine in respect of crimes committed outside Ukraine's borders.

> "Article 10. Extradition of persons charged with a crime and persons convicted of a crime.
>
> 1. Citizens of Ukraine and stateless persons residing permanently in Ukraine who have committed a crime outside the borders of Ukraine shall not be extradited to a foreign State with a view to criminal prosecution and trial.
>
> 2. An alien who has committed a crime in Ukrainian territory and has been convicted of that crime in accordance with this Code may be transferred to serve his sentence to the State of which he is a national if such transfer is provided for in the international treaties to which Ukraine is a party.
>
> 3. Aliens and stateless persons not residing permanently in Ukraine who have committed a crime outside Ukraine's borders and are in Ukrainian territory may be extradited to a foreign State with a view to criminal prosecution and trial or transferred to serve a sentence if such extradition or transfer is provided for in the international treaties to which Ukraine is a party."

According to a number of international treaties on legal assistance in criminal matters (on extradition), for example, the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, concluded in Minsk in 1993, and its new version, signed by Ukraine on 7 October 2002 (not yet entered into force), in the event of a refusal to extradite a person, the competent judicial agency of the requested Contracting Party shall rule in accordance with its legislation, in the light of the application and the documentary evidence submitted by the competent judicial agency of the requesting Contracting Party, on the question of the criminal prosecution of the person whose extradition has been refused.

The obligation to ensure criminal prosecution is established in article 72 of the 1993 version of the Convention, which is currently in force, according to which

every Contracting Party is obliged, at the request of another Contracting Party, to institute criminal proceedings in accordance with its legislation against any of its own citizens who are suspected of committing a crime in the territory of the requesting Party.

The new 2002 version of the Convention further provides that criminal proceedings shall also be instituted by the Contracting Parties against stateless persons and foreign citizens in their territory in the event of refusal to extradite.

Criminal proceedings may be instituted in the requested Contracting Party provided that the act in question is a criminal offence in that Contracting Party as well.

The sentence handed down on conviction for an offence shall not be more severe than the sentence provided for in the legislation of the requesting Contracting Party.

In addition, articles 26, 27 and 28 of the Act "on combating terrorism" lay down the foundations of international cooperation in the fight against terrorism, the provision of information to foreign States on matters connected with the fight against international terrorism, and participation in joint measures with foreign States to combat terrorism. And article 29 provides the legal basis for the extradition of persons who have taken part in terrorist activities.

Thus, the participation of aliens or stateless persons not residing permanently in Ukraine in terrorist activities may constitute grounds for their extradition to another State with a view to criminal prosecution.

The extradition of persons referred to in the first part of this article for the purpose of criminal prosecution and/or the execution of compulsory acts by a foreign State must be effected in accordance with the legislation adopted and the obligations entered into by Ukraine as a result of its ratification of the 1957 European Convention on Extradition, the 1977 European Convention on the Suppression of Terrorism, and the other international treaties whose binding status has been confirmed by the Verkhovna Rada of Ukraine, and on the basis of reciprocity.

Paragraph 1.16

Ukraine furnishes legal assistance in criminal matters pursuant to the international treaties to which it is a party or in accordance with the principle of reciprocity under an ad hoc agreement with a foreign State submitting a request for legal assistance which it needs. According to the general rule of the international treaties to which Ukraine is a party, such legal assistance shall be denied if its provision may impair Ukraine's sovereignty or security or clashes with the fundamental principles of its legislation.

In addition, the cases in which requests for legal assistance may be refused are set out in the Act of 16 January 1998 "on ratification of the European Convention on Extradition of 1957, the Additional Protocol of 1975 and the Second Additional Protocol of 1978" (as amended and supplemented by the Act of 15 December 1999) and in the Act of 16 January 1998 "on ratification of the European Convention on Mutual Assistance in Criminal Matters of 1959 and the Additional Protocol of 1978" (as amended and supplemented by the Act of 15 December 1999).

Pursuant to article 9 of the Constitution, the international treaties on legal assistance to which Ukraine is a party form part of its domestic legislation.

In connection with the entry into force for Ukraine of a number of European conventions on matters of criminal proceedings, in particular the European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959) and their Additional Protocols, as well as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and the European Convention on the Transfer of Proceedings in Criminal Matters (1972), two central executing agencies have been designated by legislative Act: with respect to pre-trial proceedings — the Office of the Procurator-General of Ukraine; and with respect to trial proceedings — the Ministry of Justice of Ukraine.

Extradition matters are regulated:

On a multilateral basis, by the European Convention on Extradition of 1957, the Additional Protocol of 1975 and the Second Additional Protocol of 1978. Relations between the States members of the Commonwealth of Independent States (CIS) are governed by the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, concluded in Minsk in 1993.

On a bilateral basis, by the treaties on extradition and the treaties on legal assistance in civil and criminal matters which contain provisions on extradition, in particular:

The Treaty between Ukraine and the People's Democratic Republic of China on Extradition of 11 December 1998;

The Treaty between Ukraine and the Republic of Poland on Legal Assistance and Legal Relations in Civil and Criminal Matters of 24 May 1993;

The Treaty between Ukraine and the Republic of Lithuania concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 7 July 1993;

The Treaty between Ukraine and the Republic of Moldova on Legal Assistance and Legal Relations in Civil and Criminal Matters of 13 December 1993;

The Treaty between Ukraine and the Republic of Estonia on Legal Assistance and Legal Relations in Civil and Criminal Matters of 15 February 1995;

The Treaty between Ukraine and Mongolia on Legal Assistance in Civil and Criminal Matters of 27 June 1995;

The Treaty between Ukraine and the Republic of Georgia on Legal Assistance and Legal Relations in Civil and Criminal Matters of 9 January 1995;

The Treaty between Ukraine and the Republic of Latvia concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 23 May 1995;

The Treaty between Ukraine and the Socialist Republic of Vietnam on Legal Assistance and Legal Relations in Civil and Criminal Matters of 6 April 2000;

The Treaty between Ukraine and the Republic of India on Extradition of 3 October 2002.

In addition, where succession to treaties is concerned, pursuant to the Act "on legal succession of Ukraine, 1991" and the provisions of the Vienna Convention on Succession of States in Respect of Treaties of 1978, Ukraine applies the following bilateral international treaties of the former USSR on legal assistance in civil and criminal matters which contain provisions on extradition:

The Treaty between the USSR and the Democratic People's Republic of Korea concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 16 December 1957;

The Treaty between the USSR and the Romanian People's Republic concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 3 April 1958;

The Treaty between the USSR and the People's Republic of Albania concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 30 June 1958;

The Treaty between the USSR and the Hungarian People's Republic concerning the Provision of Legal Assistance in Civil, Family and Criminal Cases of 15 July 1958;

The Treaty between the USSR and the Republic of Iraq on Legal Assistance of 22 June 1973;

The Treaty between the USSR and the Republic of Tunisia on Legal Assistance in Civil and Criminal Matters of 26 June 1984;

The Treaty between the USSR and the People's Democratic Republic of Algeria on Mutual Legal Assistance of 23 February 1982;

The Treaty between the USSR and the Republic of Cuba on Legal Assistance in Civil, Family and Criminal Matters of 28 November 1984.

Paragraph 1.17

An Instruction on the procedure for implementing the six European conventions on matters of criminal proceedings has been in force for Ukraine's judicial bodies since 7 July 1999. However, the provisions of this Instruction are also applied to the processing of requests for international legal assistance from other States when such assistance is not regulated by a bilateral agreement with Ukraine. If there are no circumstances which prevent compliance with the request pursuant to current Ukrainian legislation or the provisions of its international treaties, the Instruction specifies the following time limits for its processing:

(a) Extradition: on receipt of information about the arrest in a foreign State of a person liable to extradition to Ukrainian law-enforcement agencies, these agencies shall as soon as possible, but within 10 days, prepare an application with an explanation of the grounds for the person's extradition; pursuant to article 2.14 of the Instruction, the processing of requests for extradition must not take longer than 45 days;

(b) Legal assistance in criminal matters: pursuant to article 3.10 of the Instruction, the processing of requests must not take longer than 30 days;

(c) Transfer of convicted persons: pursuant to articles 6.2 and 6.8, the assembly of the documents required for the initiation of the transfer proceedings (both for transfer to Ukraine of its citizens convicted abroad and for transfer to foreign law-enforcement agencies of persons convicted in Ukraine) must not take longer than one month;

(d) Laundering, search and confiscation of the proceeds of crime: pursuant to article 7.5, the processing of requests must not take longer than 30 days.

The practical application of the provisions mentioned above depends in each specific case on the complexity and detail of the request but, if the established time limits cannot be met, a processing timetable is always agreed with the requesting party.

Paragraph 1.19

As explained above, the Act "on combating terrorism" defines the basic terms relating to terrorist activities. Legal persons are prosecuted in accordance with article 24 of the Act. The criminal liability of natural persons for terrorist activity is addressed in article 258 of the Criminal Code, which stipulates the following penalties:

1. A term of imprisonment of 5 to 10 years is imposed in respect of the commission of a terrorist act, i.e. the use of firearms, detonation of explosive devices, arson or other acts which occasion a risk to human life or health or acts producing significant damage to property or other serious consequences if such acts are committed for the purpose of impairing public safety, intimidating the population or provoking an armed conflict or international complications, or for the purpose of bringing pressure to bear on decision-making or commission or omission of acts by organs of State power or organs of local self-government or by officials of such organs, civilian associations or legal persons, or for the purpose of drawing public attention to certain political, religious or other opinions of the perpetrator (the terrorist), as well as the threat of committing such acts for these purposes;

2. A term of imprisonment of 7 to 12 years is imposed in respect of these same acts if they are repeated or if they are committed by prior agreement by a group of persons or if they produce significant damage to property or other serious consequences;

3. A term of imprisonment of 10 to 15 years or life imprisonment is imposed in respect of the acts specified in paragraphs 1 and 2 above if they result in the loss of human life;

4. A term of imprisonment of 8 to 15 years is imposed in respect of the formation of a terrorist group or terrorist organization or the leadership of or membership in such a group or organization, or the provision of material, organizational or other assistance for the formation or operation of a terrorist group or terrorist organization;

5. Criminal liability in respect of the acts specified in paragraph 4 above does not obtain in the case of persons, except for the organizer and leader, who voluntarily give information about him to a law-enforcement agency and assist with the termination of the existence or activity of a terrorist group or organization or with the detection of crimes committed in connection with the formation or

operation of the group or organization, provided that the actions of such persons do not contain elements of a different crime.

According to article 22 of the Criminal Code, persons aged at least 14 years at the time of commission of a terrorist act are liable to criminal prosecution.

Paragraph 1.20

The following steps have been taken in connection with Ukraine's final accession to the remainder of the 12 international conventions and protocols on matters related to terrorism:

- International Convention for the Suppression of the Financing of Terrorism (signed by Ukraine on 8 June 2000. and ratified on 12 September 2002 with the following declaration: "Ukraine exercises its jurisdiction with respect to the offences mentioned in article 2 of the Convention in the cases specified in article 7, paragraph 2, of the Convention");
- European Convention on the Suppression of Terrorism of 1977 (signed by Ukraine on 8 June 2000 and ratified on 17 January 2002);
- Protocol of 2003 amending the European Convention on the Suppression of Terrorism (Ukraine signed on 15 May 2003 and is completing its ratification procedures).

Paragraph 1.21

As part of the exchange of experience and conduct of joint activities, a gathering of senior personnel of the anti-terrorist units of the CIS law-enforcement agencies and special services was held on 9 and 10 June of this year in Ukraine under the auspices of the CIS Anti-Terrorist Centre, in conjunction with the "Azov-Antiterror-2003" special tactical exercise carried out jointly with the Federal Security Service of the Russian Federation (the Ministry of Foreign Affairs of Ukraine reported on this to the CTC in July 2003).

Paragraph 2.1

Ukraine is interested in receiving assistance with the expert assessment of its legislation and in conducting joint instruction and training exercises for anti-terrorism experts. Ukraine would like to take part in the bilateral and multilateral consultations on questions connected with identifying and combating the latest methods used in money-laundering and the financing of terrorism.

Paragraph 2.4

With regard to the assistance which Ukraine might offer to other States in connection with the implementation of Security Council resolution 1373 (2001), it should be noted that the Government is currently trying to reach a decision on the possibility of using the training grounds of its Security Service's Anti-Terrorist Centre for the training of special anti-terrorist units of other countries.

United Nations S/2003/1085

Security Council

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Letter dated 6 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/438).

The Counter-Terrorism Committee has received the attached third report from Azerbaijan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-61596 (E) 081203

Annex

Letter dated 31 October 2003 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resoiution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I have the honour to transmit herewith the third national report from the Republic of Azerbaijan to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Yashar **Aliyev**
Permanent Representative

Enclosure

[Original: Russian]

Supplementary report of Azerbaijan submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Pursuant to paragraph 6 of Security Council resolution 1373 (2001), Azerbaijan transmits herewith to the Counter-Terrorism Committee of the Security Council information concerning changes and achievements in legislation and in practical matters relating to counter-terrorism since the submission to the Committee of its previous reports (S/2001/1325 and S/2002/1022).

Subparagraphs 1 (a) and 1 (b):

What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to 1 (d)?

What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

In its campaign against terrorism, Azerbaijan is continuing to apply the provisions of the **1999 Counter-Terrorism Act**, the **Criminal Code of 2000** and other rules of criminal law and the law of criminal procedure.

By **Presidential Order No. 920 of 11 May 2002, a** Plan of Action was adopted to implement Security Council resolutions 1368 (2001), 1373 (2001) and 1377 (2001).

Following the accession of Azerbaijan to the International Convention for the Suppression of the Financing of Terrorism, the **Act on the introduction of changes and additions to certain legislative acts of the Republic of Azerbaijan in connection with the application of the Act of the Republic of Azerbaijan on the accession of the Republic of Azerbaijan to the International Convention for the Suppression of the Financing of Terrorism** was adopted on **17 May 2002**. That completed the national legislative basis in that area. On **27 May 2002** the **Presidential Order on the implementation of that Act** was issued. In accordance with that Act the following changes and additions were made to several legislative acts:

- The second paragraph of article 1 of the Counter-Terrorism Act was reworded as follows:

  "**Terrorism** is the causing of explosions or fires or the commission of other acts which threaten the lives of people, injure their health, cause substantial damage to property or give rise to other socially dangerous consequences with the aim of disturbing public order, sowing panic among the population or influencing the adoption of decisions by the organs of State power or international organizations, and also the threat of committing such acts with the same aim".

- An eleventh subparagraph has been added to article 1 of the Counter-Terrorism Act which reads as follows:

"**The financing of terrorism**" is the deliberate advancing, in full or in part, indirectly or directly, of monetary resources or other property for the purpose of the commission of terrorist acts, or the deliberate collection of monetary resources or other property for such purposes".

– Article 214 "**Terrorism**" of the Criminal Code has been reworded and a new article has been added — article 214-1 "The financing of terrorism" (the text of the article is given above).

The following penalties are established in respect of the commission of the criminal acts specified in article 214 "**Terrorism**" and article 214-1 "**The financing of terrorism**" of the Criminal Code:

– Under article 214 "**Terrorism**" of the Criminal Code:

"Terrorism ... is punishable by deprivation of freedom for a period of 8 to 12 years with the confiscation of property.

214.2 If those acts:

214.2.1 were committed by a group of persons who had previously entered into an agreement or by an organized group or criminal association (criminal organization);

214.2.2 were repeated offences;

214.2.3 were committed with the use of firearms and objects used as weapons;

214.2.4 through carelessness led to the death of people or other serious consequences — they are punishable by deprivation of freedom for a period of from 10 to 15 years or to life imprisonment with confiscation of property.

Note: A person who has participated in the preparation of a terrorist activity shall be relieved of responsibility in the event that he warns the authorities in good time or by some other means helps to prevent such an act, provided that his activities include no other criminal offence".

– Under article 214-1 "**Financing of terrorism**" of the Criminal Code:

"The financing of terrorism ... is punishable by deprivation of freedom for a period of from 8 to 12 years with confiscation of property".

Subparagraphs 1 (c) and 1 (d):

What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

What measures exist to prohibit the activities listed in this subparagraph?

On the whole it should be noted that in Azerbaijan, the relevant international principles relating to the suppression of the financing of terrorism are applied both in the process of preparing and improving the existing banking legislation and in the process of its practical implementation.

At the present time, in accordance with national legislation and with legally binding instruments, including the published regulations of the National Bank and

banks operating in the Republic, it is forbidden to transact operations on an account or to open an account without identifying the client and the beneficiary and without identifying the transaction itself. According to the regulations of the National Bank, all accounts and operations of terrorist individuals and organizations included in the consolidated list of the Security Council Committee drawn up in accordance with resolution 1267 are carefully checked by banking institutions. Thus, at the end of 2002 the bank account of the terrorist organization Benevolence International Foundation was identified and frozen by the competent financial institutions in Azerbaijan.

Subparagraphs 2 (b) and 2 (d):

What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

The leaders in this field, the Ministry of National Security, the Ministry of the Interior and the State Border Service, within the limits of their respective competence, are continuing, both independently and in cooperation with each other, to carry out preventive measures to prevent the commission of terrorist acts and also to identify individuals and organizations connected with international terrorist organizations or suspected of financing or providing other support to terrorism.

As noted above, counter-terrorism activities in Azerbaijan are based on the Counter-Terrorism Act. This Act is implemented in practice on the basis of **Presidential Order No. 185 of 30 August 1999 "On the implementation of the Counter-Terrorism Act"**. This is reflected in the definition and subsequent implementation of a practical set of measures, including both measures of an operational nature and measures to improve interdepartmental coordination and cooperation. With a view to preventing potential terrorist acts and acts of sabotage, plans of action have been drawn up and transmitted to local law enforcement organs for implementation. These include "A plan of measures of the Ministry of the Interior to counter terrorist attacks, manifestations of religious radicalism and other illegal acts which influence the establishment of a tense situation conducive to crime in the northern and north-western regions of the Republic of Azerbaijan", "A plan of measures to prevent the threat of terrorist acts by the international terrorist organization Al-Qaida" and joint plans of action drawn up by the Ministry of the Interior and the Ministry of National Security.

With regard to the strengthening of the organizations of the administrative counter-terrorism system, it should be noted that a department for the protection of oil and gas pipelines, a special unit (a section of the police) for the protection of diplomatic missions, and a special intra-ministerial working group have been created in the Ministry of the Interior. The tasks of the working group include the continuing monitoring of operational efforts in the Republic, the study of factors which might lead to a situation conducive to crime, including attempts to commit terrorist acts and other offences, and also manifestations of religious radicalism and extremism, the devising of appropriate responses, taking into account the results of an analysis thereof, and so on.

Subparagraph 2 (f)
What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

– *Legal*

Listed below are the multilateral treaties on the question of legal assistance to which Azerbaijan is already a party and to which it is preparing to accede:

1. **European Convention on the Extradition of Convicts** of 21 March 1983;

2. **European Agreement on the Transmission of Applications for Legal Aid** of 27 January 1977;

3. **European Convention on Extradition** of 13 December 1957 and the **Additional Protocols** thereto of 15 October 1975 and 17 March 1978;

4. **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** of 8 November 1990;

5. **European Convention on Mutual Assistance in Criminal Matters** of 20 April 1959 and the **Additional Protocol** thereto of 17 March 1978.

It should be noted that, on the Azerbaijani side, the Ministry of Justice has been appointed the coordinating body for these international legal instruments.

With regard to bilateral agreements in this area, in addition to the information provided by Azerbaijan on that subparagraph in its previous report (S/2002/1022), it should be noted that negotiations are currently taking place to reach agreement on the drafting and subsequent conclusion of agreements concerning the provision of legal assistance with such countries as the United States of America, China, India, Egypt, the United Arab Emirates, Algeria, Pakistan, the Republic of Moldova, Saudi Arabia and others. A bilatera[1] treaty has already been signed with Ukraine.

– *In practice*

On the whole it should be noted that since the events of 11 September to date (July 2003) more than 40 foreign nationals connected with international terrorist organizations have been arrested by Azerbaijan and handed over to the States concerned.

With regard to the question of criminal proceedings against persons involved in the commission of terrorist acts, it is important to note both the close cooperation within the State between the law enforcement and border authorities in Azerbaijan and the bilateral ties of cooperation between them and their colleagues in neighbouring States.

As evidence of this, mention should be made of the operation carried out jointly by the State Border Service and the internal troops of the Ministry of the Interior in July 2002 to deactivate and eliminate a terrorist group headed by Gaji Mahomedovich Mahomed, which from 2000 to 2002 committed a series of murders, terrorist acts and other crimes in the territory of Azerbaijan. During the investigation it was established that those crimes were committed by individuals who had undergone training in the territory of the Republic of Armenia and were controlled by individuals belonging to an illegal regime operating in Nagorny Karabakh, part of the territory of Azerbaijan occupied by Armenia.

With regard to regional cooperation on questions covered in the same subparagraph, the high level of cooperation and interaction between Azerbaijan and the Russian Federation and Georgia must be emphasized. For example, mention might be made of the operation to arrest and hand over to the law enforcement authorities of the Russian Federation Ramazan Rabievich Ishkildiev, a national of that country who had participated in the commission of terrorist acts in the territory of the Russian Federation (June 2002), and the operation by the Azerbaijani law enforcement authorities to arrest Umar Musaevich Abubakarov, who had illegally entered the territory of Azerbaijan.

In addition, in accordance with the special plan of action of the Ministry of the Interior to strengthen the campaign against terrorism and transnational organized crime, the law enforcement authorities of Azerbaijan, jointly with the law enforcement authorities of the Russian Federation and Georgia, periodically carry out large-scale operational and preventive measures in the border regions. For example, mention might be made of such so-called operations as "*Border*" ("*Sarhad*") and "*Shchit*" ("*Sipar*").

Subparagraph 2 (g)
How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc?

One of the immigration control authorities in Azerbaijan is the State Border Service, which under Presidential Decree No. 740 of 31 July 2002 became an independent State structure (previously the border guard had been part of the Ministry of National Security). Although it only recently became an independent organ, the State Border Service has achieved certain practical results in preventing and combating the use of terrorist channels of illegal migration. In 2002, the Service detained 8,299 people for violating the border or the border regime, of whom 195 were nationals of third States. Of these, 32 were detained for carrying forged documents or documents belonging to other people. At Bina airport alone, a total of 19 persons were detained in 2002.

In order to prevent international terrorists and other criminals from entering and leaving the territory of Azerbaijan, a Computerized Information Retrieval System has been set up at appropriate border control points in the Republic. This system involves all State authorities engaged in immigration control: the State Border Service, the department for visas and registration of the Ministry of the Interior and the consular department of the Ministry of Foreign Affairs. It is designed to provide an accurate record of persons crossing the border at the control points and ensure effective verification of the authenticity of their documents.

Law enforcement agencies are working on the regular updating of the lists of suspicious persons, persons who have committed crimes and wanted persons, which are then sent for checking by various offices, including the immigration control authorities. In order to prevent illegal migration, the relevant State structures involved in border control regularly provide information on persons attempting illegally to cross the border using forged documents.

The actual documents required to cross the border (passport, identity papers, etc.) upon entering or leaving the country are issued in an agreed and centralized manner. They are all subject at any time to verification by the above-mentioned

Computerized Information Retrieval System and other technical devices. In addition, they incorporate a number of security features. In order to update the "Passport" information retrieval system, the necessary changes and additions are constantly being made to the database. In this area, there is close interdepartmental cooperation, coordination and exchange of information between all immigration control authorities.

In addition, at all control points, various special technical means of verification are used to identify persons trying to cross the border illegally and baggage is also checked for, inter alia, narcotics and components of weapons of mass destruction. Use is currently being made at control points of such technical devices as mobile laboratories for checking documents, radiation detection pagers, various types of inspection loupes, one-way mirrors and lamination shield verification devices.

The State Border Service has also organized an information exchange, in the form of questionnaires on issues of operational importance, with the relevant border control authorities and special services of other countries. At the regional level, information is exchanged between the competent authorities of members of the Commonwealth of Independent States (CIS) on persons and centres engaged in forgery of travel documents.

However, effective and reliable prevention of threats to transport corridors from international terrorists or terrorist groups and of attempts illegally to cross the State border will not be possible until a border service has been reinstated along the 132-kilometre segment of the southern border which was left outside the control of Azerbaijan as a result of the occupation of the territory of Azerbaijan by Armenia and until the territorial integrity of Azerbaijan and the borders within which Azerbaijan received international recognition have been restored.

In addition, it is necessary, in accordance with international requirements, to restore the engineering and technical installations in this occupied segment and to set up modern technical installations on the other segments of the State border.

Subparagraph 3 (a)
What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

In the matter of the exchange of information, particularly regarding the activities or movements of terrorists or terrorist networks, forged or falsified travel documents, trade in weapons, explosives or dual-use materials and use of information technology by terrorist groups, the Republic of Azerbaijan is actively cooperating with Interpol. In particular, in order to take the necessary effective measures of this kind, information received from the Interpol General Secretariat or from members of the organization is transmitted to the operational service of the Ministry of the Interior, the Ministry of National Security and Azerbaijan Airlines. According to current statistics, the Ministry of National Security processed 111 queries from the Interpol General Secretariat and 24 from Interpol member States about suspected international terrorism.

Paragraph 3 (b) and 3 (c)
What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

What steps have been taken to cooperate in the areas indicated in this subparagraph?

Since 1995, 14 bilateral protocols and two memoranda on cooperation to combat terrorism and other manifestations of organized crime have been concluded between the Ministry of National Security and foreign partners.

Subparagraph 3 (d)
What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

As is well known, the Republic of Azerbaijan is a party to eight of the 12 international conventions and protocols on counter-terrorism. The question of accession to the remaining four international agreements is currently being dealt with under domestic procedures. The slight delay is due to technical reasons connected with the translation of these instruments into the national language.

Subparagraph 3 (e)
Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

See reply to subparagraphs 1 (a) and 1 (b).

Additional information

- ***Cooperation by Azerbaijan within the framework of international organizations, and assistance provided to Azerbaijan by international organizations and foreign States in the area of counter-terrorism***

Azerbaijan is continuing actively to cooperate with international organizations in the area of counter-terrorism — various United Nations bodies, Council of Europe, Organization for Security and Cooperation in Europe (OSCE), Euro-Atlantic Partnership Council/Partnership for Peace (EAPC/PfP), GUUAM Group of States, Commonwealth of Independent States (CIS), Organization of the Black Sea Economic Cooperation (BSEC), Southeast European Cooperative Initiative (SECI), etc. For example, Azerbaijan recently hosted international events such as:

- The international conference under OSCE auspices on "The role of religion and belief in a democratic society: searching for ways to combat terrorism and extremism", 10 and 11 October 2002;
- The third meeting of the GUUAM Working Group on efforts to combat terrorism, organized crime and the spread of narcotics, 26 and 27 February 2003;
- The NATO/EAPC/PfP international seminar on the link between terrorism, drug trafficking and other types of illegal activity, 5 and 6 May 2003.

Particular emphasis should be placed on Azerbaijan's participation in the work of GUUAM. As chairman of the above-mentioned GUUAM Working Group on efforts to combat terrorism, organized crime and the spread of narcotics, Azerbaijan

represented that regional organization at the meetings of the Counter-Terrorism Committee with international, regional and subregional organizations held on 6 March and 7 October 2003, at which relevant information was provided on projects currently being implemented in GUUAM in the area of counter-terrorism.

Azerbaijan is grateful to the United Nations Office on Drugs and Crime and to OSCE for the advisory assistance provided to Azerbaijan in the implementation of Security Council resolution 1373 (2001) and in the area of efforts to combat the financing of terrorism and money-laundering. In connection with these projects, four national seminars were held with the participation of experts from the relevant State organs of Azerbaijan and of international consultants, following which certain recommendations were made identifying the basic areas in which the legislation and administrative structure need improvement.

Azerbaijan is also receiving assistance from NATO/EAPC in upgrading the skills of staff dealing with counter-terrorism. The question of efforts to combat the financing of terrorism and money-laundering is also being dealt with in the context of Azerbaijan's cooperation with the Council of Europe. Azerbaijan is also continuing to cooperate with the CIS Counter-Terrorism Centre in the exchange of analytical information.

The State Border Service of Azerbaijan has also established close ties with the International Organization for Migration, which has led to an ongoing exchange of information. The Ministry of Justice of Azerbaijan is in close contact with its counterparts in Turkey, the Russian Federation, Lithuania, the Netherlands, Ukraine and Iran, and is implementing programmes for the training of judges, judicial workers and other jurists and agreements on cooperation, including exchanges of information between judicial authorities.

Considerable technical and advisory assistance is being given to Azerbaijan by the United States under the counter-terrorism assistance programme.

– ***Azerbaijan's need for counter-terrorism assistance***

A report (in English) assessing Azerbaijan's counter-terrorism needs is attached to this report and identifies specific areas in need of financing.

In addition to material and technical assistance, Azerbaijan would welcome assistance in national capacity-building. In particular, there is a need for expert advisory assistance in such areas as the creation of a national counter-terrorism programme, evaluation and enhancement of national legislation and upgrading of the organization and structure of the relevant State organs, training of staff in the use of special equipment, development of local facilities for the provision of training of various kinds, and training for workers in the banking sector and for persons dealing with data security.

Annex

ASSESSMENT REPORT OF THE COUNTER-TERRORISM RELATED CAPACITY BUILDING ASSISTANCE NEEDS

Introduction

From the very first day, Azerbaijan has joined the international anti-terrorist coalition to contribute to the struggle of the world community against the scourge of terrorism. Having maintained its firm position against terrorism, Azerbaijan stands ready to do its utmost to eradicate this evil and has undertaken certain measures to strengthen the effectiveness of countering terrorism on national and international levels.

However, achievements of Azerbaijan in the counter-terrorism area are retarded by the scarcity of necessary logistics and equipment for effective implementation of counter-terrorism measures and the difficulty of providing such logistic support at the expense of internal resources. For the purposes of enhancing the counter-terrorism capacity of the government bodies, it is of an utmost importance to create comprehensive logistics capacities and equipment alongside maintaining the existing operational capabilities. From this perspective, counter-terrorism related capacity building assistance needs have been defined as follows.

I. EQUIPMENT AND LOGISTICS SUPPORT

1. **Purpose: enhancing mobility of counter-terrorism task forces to undertake preventive measures as well as during terrorist chasing and covert operations.**

1.1. Provision of equipment for observation and surveillance:

- video and photo-surveillance equipment;
- laser sight for automatic guns;
- mobile points of secret audio-video observations;
- long-distance and night observation optic devices, etc.

1.2. Provision of equipment for development of information-exchange and communication network:

- special speaking devices for communication during the operation;
- re-transmitter operating at different frequency diapason;
- manual and mobile radio stations for vehicles;
- sources/facilities of radio electronic emanation;
- radio-monitoring system at HF/VHF/UHF diapason for the direction-finding of the GSM type mobile phones, radio coverage and decoding of information.

1.3. Provision of equipment designed for specific purposes:

- criminalistic laboratory set up in the flexible carrier helicopter, or car;
- criminalistic and technical facilities;
- facilities for secret acquisition and documentation of audio-video information;

- facilities to detect devises for covert/secret acquisition of information;
- facilities for radiolocation (navigation) of moving objects;
- facilities for opening of locking devices;
- facilities for secret passing of building structures;
- special capturing devices to detain transportation means;
- special devices to detect counterfeit money;
- infrared spectroscopy.

1.4. Provision of transportation facilities:

- helicopters and aircrafts (*comments*: such kind of equipment is needed to efficiently conduct anti-terrorist operations in the stiff terrain and high mountainous areas);
- minibuses with special equipment;
- cross-country vehicles.

1.5. Provision of personal safety outfit (jackets, helmets, etc.).

2. Purpose: enhancing capacity of border control and customs services to detect radioactive and WMD components and to neutralize explosives.

2.1. Provision of detection and neutralization equipment:

- mobile chemical and biological laboratory equipped with radiation measuring devices;
- special criminalistic laboratory set up in the flexible carrier (helicopter, or car);
- ionizing radiation meter;
- isotope detecting devices;
- special monitors;
- equipment for detection of new types of explosive devices and items in postal channels;
- facilities for the neutralization of explosive devices.

2.2. Provision of personal protection facilities (defense suits, autonomous breathing devices, etc.).

2.3. Provision of equipment and logistics support for creation of Cynological Center at the State Customs Committee (*comments:* trained dogs will be used in the detection of drugs, which mostly serve as a financial source for terrorism, explosive substances and devices, weapons and other means possibly to be used by terrorists).

3. Purpose: establishment of modern information management systems and communication infrastructure.

Comments: There is an immense necessity to purchase encrypted communication facilities and other technical facilities for obtaining, gathering, systemization, analysis and exchange of written, audio, video and digital information between relevant government agencies as well as between Azerbaijan and the partner countries.

3.1. Creation of a stationary and mobile information-communication infrastructure of counter-terrorism task forces:

- upgrade of commutation equipment designed for the telephone communication networks;
- upgrade of a computer network among the government agencies dealing with counter-terrorism, on one hand, and within the government agencies themselves;
- creation of an encrypted digital radiotrank communication in Baky, and for these purposes establishment of a local computer network and develop a special software for databases and circulation of electronic documents.

3.2. Upgrade of computer systems used for the analysis of audio-video materials.

4. Purpose: ensuring security of maritime boundaries.

4.1. Modernization and equipment upgrading of technical observation posts along coastal border posts and uniting them in one network (comments: in order to ensure security of oil deposits and floating facilities in the Azerbaijani sector of the Caspian Sea against potential terrorist attacks).

4.2. Creation of special divisions and infrastructure for border guard vessels in North (Khachmaz district) and South (Lenkeran district) directions, as well as in the water storage of Araz river network in the Nakhichevan Autonomous Republic.

II. PERSONNEL TRAINING

Comments: the provision of modern equipment should be accompanied by assistance in personnel training.

1. Purpose: development of local facilities for training in the counter-terrorism area.

1.1. Establishment of a Counter Terrorism Education Center.

Comments: This need stems from the fact that at present, training process for the Azerbaijani specialists is provided by partner countries, primarily by the United States, once in every 1-3 months by 1-3 week courses for a group in different foreign countries. In our opinion, it would be more reasonable instead of making large expenditures for tens of people for their travel abroad, for their lodging and training, to direct those funds to the implementation of programs at the existing educational centers on permanent and long-term basis and also attract specialists from other partner countries to these programs. Nowadays there are Academy of the Ministry of National Security, Police Academy and Academy under the State Customs Committee in Azerbaijan. It should be also noted that there is a Training Center on migration issues established at the Academy of the Ministry of National Security with the assistance of International Migration Organization.

1.2. Strengthening the logistical basis of the existing Regional Education Center for customs control officers.

Comments: The Regional Education Center was built in Baky according to the Memorandum signed between the State Customs Committee of Azerbaijan and World Customs Organizations, and is designated for preparing professional cadres for custom services of the states in the region. It is necessary to provide this Center with up-to-date education facilities, and also with facilities to be used in the trainings on counter-terrorism issues.

1.3. Elaboration of educational methodic facilities, instruction-based text-books and literature on terrorism issues.

2. Purpose: increasing the capacity in training of translators.

Comments: According to national legislation, all the international instruments Azerbaijan is going to be a party to should be translated into the official Azerbaijani language and afterwards, pass through the internal review procedures.

2.1. Organization of the courses and training for law translators.

2.2. Provision of equipment and logistics support to establish a Translation Center.

III. OTHER TECHNICAL AND EXPERT ASSISTANCE

1. Purpose: assessment of the existing national resources and optimizing the national structure.

1.1. Development of Counter-terrorism Country Programme for Azerbaijan.

1.2. Roadmapping the Counter-terrorism Assistance Programme for Azerbaijan.

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Letter dated 6 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/446).

The Counter-Terrorism Committee has received the attached third report from Slovenia submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 2 July 2003 from the Permanent Representative of Slovenia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On the instructions of my Government and further to the letter dated 4 April 2003 from the Chairman of the Counter-Terrorism Committee, I have the honour to transmit additional information on the questions and comments raised in his letter concerning the reports of the Republic of Slovenia on counter-terrorism measures pursuant to Security Council resolution 1373 (2001), submitted to the Committee on 27 December 2001 and 12 July 2002 (see enclosure).*

The Government of the Republic of Slovenia stands ready to provide any further information requested by the Counter-Terrorism Committee.

(*Signed*) Roman **Kirn**
Ambassador
Permanent Representative of the
Republic of Slovenia to the United Nations

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

2nd Supplementary Report of the Republic of Slovenia on Counter-Terrorist Measures Pursuant to the UN Security Council Resolution 1373 adopted on 28 September 2001

AD 1. – Implementation measures:

- **Sub-paragraph 1.2:**

1. 2. Effective implementation of sub-paragraph 1 (b) of the Resolution requires a State to have in place provisions specifically criminalising the wilful provision or collection of funds by its nationals or in its territory, by any means, direct or indirect, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds are actually used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalised are thus capable of being committed even if:

- ***The only related terrorist act takes place or is intended to take place outside the country;***
- ***No related terrorist act actually occurs or is attempted;***
- ***No transfer of funds from one country to other takes place; or***
- ***The funds are legal in origin.***

The current provisions in the law of Slovenia, in particular articles 27 and 297 of the Penal Code of Slovenia, referred to at page 3 of the supplementary report, do not appear adequately to meet the aforementioned requirements. The CTC would welcome receiving particulars of the legal provisions which are in place to meet those requirements or, in their absence, an indication of the steps which Slovenia intends taking in that regard.

As we have stated in sub-paragraph 1 (b) of the initial Report of the Republic of Slovenia, it is almost completely possible to prosecute the financing of terrorism, as regulated in the International Convention for the Suppression of the Financing of Terrorism, in conformity with the legal provisions regarding the financing of terrorism enshrined in the General Provisions of the Penal Code regulating the participation in a criminal offence (Article 27 of the Penal Code) connected to other criminal offences from the Special Provisions section. However, the prosecution and punishment of a person, collecting financial funds in order to use them to commit a terrorist act, is not possible if the terrorist act was not carried out with the collected financial funds. This is why with the expected changes and amendments of the Penal Code Slovenia intends to constitute a new criminal offence of financing of terrorism which would capture all circumstances provided in Article 2 of the International Convention for the Suppression of the Financing of Terrorism and criminalise the provision or collection of funds with the intention of committing a terrorist act even if the act itself was not committed.

It is expected that the Act Amending the Penal Code will be submitted to the Government of the Republic of Slovenia in July 2003, and to the National Assembly of the Republic of Slovenia in September 2003. In view of the extensiveness of the proposed act we expect that the National Assembly will deal with it according to the standard three-reading procedure. Since the proposed act includes harmonisation with numerous international documents and partly interferes with the General Provisions of the Penal Code, a detailed discussion about individual proposed changes is expected, making the precise time of adoption of this act impossible to predict.

We agree with the CTC's opinion that Article 297 of the Penal Code does not meet the requirements of the aforementioned Convention adequately. At the same time we would like to stress that we did not suggest mentioning this Article when preparing the initial Report. We would like to explicitly point out the second paragraph of the answer in sub-paragraph 1 (b) (beginning with "In November 2001 Slovenia ...") taking into account the additional explanations above.

- **Sub-paragraph 1.3:**

Please outline the legal provisions in force in Slovenia which regulate alternative money transfer agencies or services or, in their absence, the steps which Slovenia intends taking in order to incorporate this aspect of the Resolution into its domestic law.

We do not have any alternative money transfer agencies or services in the Republic of Slovenia.

- **Sub-paragraph 1.4:**

Sub-paragraph 1 (c) of the Resolution requires that States freeze without delay the funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The initial report mentions a legal procedure which is available in relation to funds derived from criminal offences (page 4) or held in the names of persons and entities identified in lists of the UN Security Council as being linked to terrorist activities (page 6) But Slovenia appears to have no legal provision for the freezing of funds, regardless of origin, that are suspected of being linked to terrorism, but have not yet been used for the commission of a terrorist act. Please provide particulars of the steps which Slovenia has taken, or proposes to take, to meet that requirement.

There is no legal provision for the freezing of funds, that are suspected of being linked to terrorism in the Penal Code of the Republic of Slovenia, but such provision can be found in the Law on Restrictive Measures (adopted in April 2001, the Official Gazette of the Republic of Slovenia 35/2001), which was amended by the Law on the Amendments to the Law on Restrictive Measures (adopted in June 2002, the Official Gazette of the Republic of Slovenia 59/2002) and decrees, issued on the basis of this Law (Government Decree on Measures against the Taliban from 4 October, 2001 and Government Decree amending the Government Decree on Measures against the Taliban from 4 April 2002).

The Law on the Restrictive Measures and the Law on the Amendments to the Law on Restrictive Measures state that the information (listed in Article 2a) about the persons (who are subject to the restrictive measures) should be reported to a special Interdepartmental working group for the implementation of restrictive measures and for the following of activities relating to the fight against terrorism (Governmental Decree dated 23 January 2003). The latter can forward the information, stated in Article 2a of this Law, to the United Nations and other international organizations (listed in Article 1), if this is necessary for performing the sanctions of the United Nations and other international organizations or associations, with which the Republic of Slovenia is obliged to cooperate.

The expected change of the Penal Code, which will criminalise the criminal offence of terrorism, will also solve the issue of those persons, terrorists and terrorist organizations, which are not on the list of the United Nations.

- **Sub-paragraph 1.5:**

Sub-paragraph 2 (a) of the Resolution requires each Member State, inter alia, to criminalise the recruitment of terrorists within its territory whether the recruitment occurs with a view to carrying out terrorist activities inside the country or abroad. In this regard, the first report drew attention to the General Provisions of the Penal Code, as well as to article 297 of that Code. However, the provisions referred to would appear to apply

only to cases pertaining to internal security. Furthermore, it will not always be the case that the person carrying out the recruitment will belong to a criminal or a terrorist organisation. It is also possible that recruitment to terrorist bodies will be brought about by deception, for example a representation that the recruitment relates to teaching and not to terrorism. Accordingly, the existing provisions in Slovenia do not appear fully to meet the requirement of sub-paragraph 2 (a) as regards recruitment. Please comment on the remedial steps which Slovenia has taken, or proposes to take in that respect.

The General Provisions of the Penal Code on aid, abet, and complicity, and Article 297 of the Penal Code can be applied to all criminal offences and not only in connection with those criminal offences pertaining to internal security.

Article 388 of the Penal Code, referred to in sub-paragraph 1 (b) of the initial Report of the Republic of Slovenia, explicitly addresses international terrorism ("against another country or international organisation"), while the General Provisions on aid, abet and complicity can be applied to all criminal offences listed in the Special Provisions of the Penal Code, and, therefore, also in relation to aid, abet and complicity regarding the criminal offence of international terrorism.

In addition, Article 297 does not criminalise a person establishing a criminal association or joining it only in case the association intends to commit criminal offences inside the Republic of Slovenia, but addresses the "intention to commit a criminal offence" in general.

Pursuant to Article 122 of the Penal Code this Code applies to citizens of the Republic of Slovenia even if they commit a criminal offence abroad and are caught on the Slovenian territory or extradited to Slovenia. In addition, Article 123 of the Penal Code can be applied to a foreign citizen who commits a criminal offence against another country or against another foreign citizen abroad, if they are caught on the territory of the Republic of Slovenia and not extradited to another country. Since the provisions of Articles 122 and 123 are part of General Provisions and do not contain any explicit limitations to specific criminal offences, they can be applied to all criminal offences listed in the Special Provisions.

- **Sub-paragraph 1.6:**

In addressing sub-paragraph 2 (g), the initial report states (page 11 and 12) that "the Republic of Slovenia drafted a Bill amending the Aliens Act". The CTC would appreciate receiving a progress report on the enactment of the aforementioned provisions into the domestic law of Slovenia.

The Republic of Slovenia regulated this area with the Aliens Act (the Official Gazette of the Republic of Slovenia numbers 61/1999 and 87/2002) and with the Instructions on Refusal of Entry, Conditions for Issuing Visas at Border Crossings, Conditions for Issuing Visas based on Humanitarian Reasons and Annulment of Visas (The Official Gazette of the Republic of Slovenia number 2/2001). The following provisions explicitly refer to the aforementioned resolution (the Aliens Act articles are only partially summarised):

Article 7

For the purpose of entering and staying in the Republic of Slovenia, aliens must be in possession of a valid travel document, unless otherwise determined by law or by an international agreement.

Article 8

In addition to the valid travel document specified in Article 7 of this Act and in order to enter the Republic of Slovenia, aliens must be in possession of a visa or residence permit, unless otherwise determined by law or by an international agreement.

The Government of the Republic of Slovenia can issue a decree stating that citizens from specific countries can enter and leave the Republic of Slovenia without a visa.

Article 9

Aliens shall be refused entry into the country, notwithstanding the fulfilment of requirements from Articles 7 and 8, if there are serious reasons to suspect that they pose a threat to public order and peace, and to the security and international relations of the Republic of Slovenia, or if there is a suspicion that their presence is associated with the carrying-out of terrorist and other violent activities, illegal intelligence activities, drug possession and trafficking, or other criminal activities.

These reasons are defined in detail in Articles 3 and 4 of the Instructions on Refusal of Entry, Conditions for Issuing Visas at Border Crossings, Conditions for Issuing Visas based on Humanitarian Reasons and Annulment of Visas (if there is a suspicion that their presence is associated with the carrying-out of terrorist and other violent activities, illegal intelligence activities, drug possession and trafficking).

The refusal of entry shall be entered in the alien's travel document and shall be entered in the record of persons who have been refused entry.

Article 10

In addition to personal, vehicle and item checks in accordance with the act governing control of the state border, the border control of aliens entering the country shall consist of a thorough examination of whether there are reasons for refusing entry into the country on the basis of Article 9 of this Act.

The border control of aliens leaving the country shall, in particular, comprise control required for protecting domestic and international interests of the Republic of Slovenia, public peace and order, and examination of whether there are reasons for refusing departure from the country.

Article 20

An alien shall not be issued with a visa if there are reasons for refusing entry in accordance with Article 9.

Article 43

This Article explicitly provides that the permit for residence in the Republic of Slovenia shall not be issued to an alien if there are reasons to reasonably suspect that they pose a threat to public order and peace, and to the security and international relations of the Republic of Slovenia, or if there is a suspicion that their presence is associated with the carrying-out of terrorist and other violent activities, illegal intelligence activities, drug possession and trafficking, or other criminal activities.

Article 44

A residence permit may be annulled by the body which issued this permit if it is subsequently determined that there were reasons for refusing to issue a permit; if reasons subsequently arise for refusing to issue a permit; if the alien concerned intentionally submitted incorrect data on their identity or other inaccurate data, or if he/she intentionally concealed circumstances which have a bearing on the issuing of a permit.

The competent body shall issue a decision on the annulment of a residence permit. An alien may file an appeal against the decision with the ministry responsible for the interior within eight days of the decision being handed down.

Article 48

Residence may be annulled with respect to an alien who is in possession of a residence permit in the Republic of Slovenia if there are well-founded reasons for believing that the alien concerned may pose a threat to national security or to public security and peace.

Article 50

An alien who has to be deported from the country shall be brought to the state border by the police and directed across the border. The police shall also bring to and direct across the state border an alien who is being deported on the basis of an international agreement.

Article 76

An alien who is in possession of a permanent residence permit in the Republic of Slovenia may be issued with a travel document for aliens if the person concerned is stateless, or if the person does not have and cannot acquire a valid travel document from his/her country of origin. A travel document for aliens may also be issued to other aliens who do not have a valid travel document, if well-founded reasons exist for this.

Article 79

This Article provides conditions for refusal to issue travel documents for aliens and their seizure.

Article 80

This Article provides conditions for issuing personal identity cards for aliens and reasons for their seizure.

For a more efficient implementation of measures regarding refusal to issue residence permits to aliens whose presence could be connected with committing terrorist acts, Article 43 of the Aliens Act provides that the residence permit in the Republic of Slovenia shall not be issued to an alien if there are well-founded reasons to suspect that they pose a threat to public order and peace, and to the security associated with the carrying-out of terrorist and other violent activities, illegal intelligence activities, drug possession, or other criminal activities.

- **Sub-paragraph 1.7:**

Please provide a progress report on the ratification of the 4 international instruments relating to terrorism to which Slovenia has not yet become a party.

1. On 18 December 2002 the National Assembly of the Republic of Slovenia **ratified** the International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997), which was published in the Official Gazette of the Republic of Slovenia – MP number 1/2003 (the Official Gazette of the Republic of Slovenia number 2/2003).

2. **On 18 June 2003 the National Assembly of the Republic of Slovenia** ratified **the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988).**

3. On 18 June 2003 the National Assembly of the Republic of Slovenia **ratified** the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988).

4. The ratification of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999) is related to the changes in the criminal legislation of the Republic of Slovenia (see explanation in sub-paragraph 1.2).

The ratification of the International Convention for the Suppression of the Financing of Terrorism lies within the competence of the Ministry of Justice of the Republic of Slovenia. A minor part of the Slovenian criminal legislation (criminalisation of financing of terrorism if a relevant terrorist act was not committed) is not in line with the Convention. This is why the Penal Code needs to be aligned with the Convention before adopting the Act Ratifying the Convention. It is expected that the Act Ratifying the Convention will be proposed simultaneously with the changes regarding the Penal Code.

- **Sub-paragraph 1.8:**

The CTC has noted, from the supplementary report (at page 9), that Slovenia has established a "governmental inter-ministerial coordination of counter-terrorist measures". The supplementary report further states that the task of the inter-ministerial coordination is to provide guidelines, as well as coordinate and monitor, all the counter-terrorist measures and activities of state-run bodies in Slovenia. The CTC would appreciate receiving more information, including examples of practical nature, concerning the work of the inter-ministerial coordination.

On 11 May 2001 the National Assembly of the Republic of Slovenia adopted a Restrictive Measures Act, which was amended on 21 June 2002. The Government of the Republic of Slovenia established an Interdepartmental working group for the implementation of restrictive measures and for the following of activities relating to the fight against terrorism.

By establishing the aforementioned working group Slovenia upgraded the existing "governmental inter-ministerial coordination of counter-terrorist measures" and made progress in dealing with issues related both to terrorism and to restrictive measures systematically. The interdepartmental working group is responsible both for the implementation of restrictive measures provided by Government decrees and for monitoring the activities related to the fight against terrorism. The working group is headed by a state secretary at the Ministry of Foreign Affairs and composed of representatives of the Office for Money Laundering Prevention, Ministry of the Economy, Ministry of Justice, Ministry of the Environment, Spatial Planning and Energy, Ministry of the Interior, Ministry of Health, the Customs Administration of the Republic of Slovenia, Ministry of Defence, Ministry of Transport and the Bank of Slovenia.

The Government of the Republic of Slovenia can, following a proposal of the aforementioned working group, take a decision to adopt or revoke restrictive measures against specific countries regarding the obligations determined by provisions of international law. There are two kinds of binding obligations that need to be constantly upgraded or alternated according to the changes of the situation:

- new notices regarding changes of the UN restrictive measures (revocations, changes, new measures) and the adequate amendments of Governmental decrees, and
- the EU restrictive measures.

Common action at national level is very important, since it represents active involvement of all governmental sectors dealing with the fight against international terrorism. This kind of common action also includes:

- **Interdepartmental working group for the implementation of restrictive measures and for the following of activities relating to the fight against terrorism,**
- Interdepartmental working group for the implementation of the Act Regulating the Exports of Dual-Use Goods provisions,

- Interdepartmental cooperation between the Ministry of the Interior of the Republic of Slovenia and the Ministry of Defence of the Republic of Slovenia.

It is also worth mentioning the successful cooperation between all three security subjects of the Republic of Slovenia bound by the Slovenian legislation regulating relations between individual ministries.

- **Sub-paragraph 1.9:**

The CTC is aware that Slovenia may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other international organisations involved in monitoring international standards. The CTC would be pleased to receive a copy of any such report or questionnaire as part to Slovenia's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373.

In April 2003 the Republic of Slovenia submitted a report based on the OSCE Code of Conduct on Politico-Military Aspects of Security which also included a special chapter on terrorism.

On 18 April 2003 the Government of the Republic of Slovenia adopted a report of the Republic of Slovenia on the implementation of sanctions against the Taliban and Al Qaida pursuant to the UN Security Council Resolution 1455 (2003), which was submitted to the UN Sanctions Committee established after the UN Security Council Resolution 1267 (1999). This report was published as a UN Security Council document on 24 April 2003 under reference number S/AC.37/2003/(1455)/34.

The Republic of Slovenia is also submitting answers to two Council of Europe questionnaires, namely the Council of Europe Questionnaire on Special Investigation Techniques in relation to Acts of Terrorism and the Council of Europe Questionnaire on the Protection of Witnesses and "Pentiti" in relation to Acts of Terrorism.

Ljubljana, June 2003